

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BETANCOURT PROPERTIES MANAGEMENT CORP.
and RENEWAL ARTS REALTY CORP.,

Plaintiffs,

-against-

SIMPLEX GRINNELL LP a/k/a and/or d/b/a
SIMPLEX GRINNELL or TYCO/FIRE &
SECURITY/SIMPLEX GRINNELL,

Defendants.
-----X

STATE OF NEW YORK)
COUNTY OF THE BRONX) ss:

Jose Betancourt, President of BETANCOURT PROPERTIES MANAGEMENT CORP. and RENEWAL ARTS REALTY CORP., being duly sworn, deposes and states the following under the penalty of perjury and having personal knowledge thereof:

1. This Declaration is offered in opposition to Defendant's Motion and in support of Plaintiffs' Cross-Motion;

2. At all relevant times I personally disputed, verbally and in writing, all charges by the Defendant for the subject project.

3. The Defendant failed and refused to complete the subject project for a fire system in a proper or timely manner and Plaintiffs were damaged thereby.

**DECLARATION IN
OPPOSITION TO MOTION
TO DISMISS AND IN
SUPPORT OF CROSS-MOTION
CASE NO. 07-cv-11047 (TPG)**

8. I also believe that the Defendant engaged in a scheme to defraud Plaintiffs as alleged in the Complaint. Countless lies and non-performance by Defendant should not be allowed to go without a day in Court for Plaintiff as evidenced by the NYC Fire Department

Complaint as a matter of law.

and that the Defendant is not entitled to any dismissal of the issues of fact of Defendant's faulty performance of the contract bar. Clearly, documentary evidence exists that indicates genuine Department against the premises for the subject project that is at Letters of Defect I received from the City of New York Fire 7. Annexed hereto as Exhibit "C" is a true copy of the

Plaintiffs' instant claims against Defendant.

against the premises which I received that outlines the basis for of the City of New York Fire Department letter dated April 25, 2007 6. Additionally, annexed hereto as Exhibit "B" is a true copy

the case at bar.

does not have any clause prohibiting an action for damages as in 5. I am informed by our attorney that the subject contract properly placed on notice of Plaintiffs' claims against it.

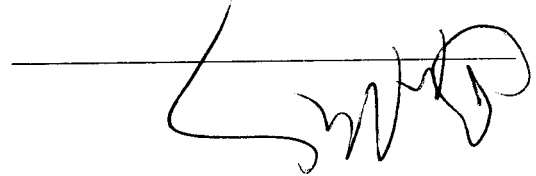
Defendant via fax and certified mail. Clearly, the Defendant was contract, etc. regarding the project. Said letter was sent to the July 3, 2007 to the Defendant outlining various breaches of reference herein as Exhibit "A" is a true copy of my letter dated 4. For simplification, attached hereto and incorporated by

correspondence. Further, Plaintiffs have had to expend additional monies to cure and complete Defendant's defective work in addition to other related losses.

9. It is respectfully requested that Defendant's motion be denied and that Plaintiffs' Cross - Motion be granted and for such other and further relief as the Court deems just, proper and equitable.

JOSE BETANCOURT, PRES.
BETANCOURT PROPERTIES MANAGEMENT CORP.
and RENEWAL ARTS REALTY CORP.

Sworn to on the 23rd day
of April, 2008.



BRIAN M. LIMMER
Notary Public, State of New York
No. 02L14785163
Qualified in Nassau County
Commission Expires July 31, 2009

EXHIBIT "A"

me I signed the agreement in good faith.
before the end of the month and because all the promises that you made to
\$75,000.00 every month. You assured me that everything could be ready
to you very clear that this job was a top priority and I was losing
annual fee of \$11,625.00 and finally we settle for \$10,500.00. I explained
2) On May 17 we negotiate a five year service agreement, you asked for an
c) Provide technicians for FD inspections.
system is trouble free.
b) Provide electrical contract of record for A-433 and affidavit stating
B-45.
a) Engineer of record to perform post approval amendment, modify FA6
and FA7 Plans to reflect temporal 3 operations, resubmit M2565 and

The scope of work that you promised to do was to provide for:

1) On May 24th you gave me a scope of work totaling \$4,032.00 and that was
to perform a pre-test to determine system conditions. You sent two (2)
men to perform one time full fire alarm inspection, and then on May 29th
you sent me a quotation for \$9,568.00 to correct deficiencies as per the
pre-test you performed.

Effective today July 3, 2007, the service agreement for the Fire Alarm System at
the above mentioned property is cancelled and rendered null and void for the
following reasons:

Re: Location: 804 E 138th Street, Bronx, N.Y.

Attention: S. Altan Mansur

Tyco/Simplex Grinnell
2323 Randolph Avenue
Avenel, N.J. 07001-0000

Fax (212) 462-4524
Via Certified Mail:
7006 0810 0000 3167 5088

July 3, 2007

Betancourt Properties Mgmt. Corp.
800 EAST 138TH STREET, BRONX, N.Y. 10454
TEL: 718-742-2800 * FAX: 718-742-2818



3 Pages
07-03-07

3) Every time I called Robert Laurie I reminded him of the urgency to finish this job and he asked me not to worry because everything was moving along very well.

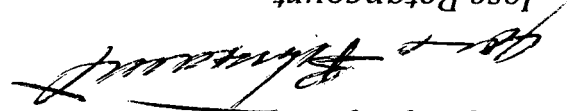
4) On June 21st, Robert claimed that he sent his expeditor to the Building Department to file the corrected applications and drawings and they told him that the folder for my job was missing. They were right, my expeditor had the folder. On the next day (June 22), I picked up the folder and I called Robert. He told me that he would meet me Monday the 25th at my office to pick up the folder, that same day he told me that the modified drawings were ready and he would make an appointment the next day to present all the papers including the corrected drawings. To my surprise, Robert confessed that as of that day they had not started working on those modifications yet and the applications to be file were not ready. So all along I was given the wrong impression that everything was under control. Again, I reminded him about my losses of \$75,000.00 every month and that I could not be happy with this situation, knowing that they have been acting with negligence.

5) On the 27th I called Tony Somefun, he was the person that recommended your company. I told him about the problem and the false promises I was getting from your company, and he came over to help resolve my problem. Mr. Somefun corrected the drawings, made the copies and prepare the applications in my office. We made copies and took them to the Building Department and they gave us an appointment with the examiner for June 28th in the morning to review the drawings and approval. Our rush was to meet the deadline of July 2nd inspection. In two (2) days, Mr. Somefun did what your company could not in one month and a half, plus another month that you might need to be ready for inspection which would increase my losses to \$187,500.00.

6) Robert apologized for the very poor performance of his company and confess that the reason was that his engineer was on vacation and the only thing he could do was to bring a raised diagram and talk to the inspector to see if he could accept it instead of the approved drawings. Again, I reminded him of my losses and asked him who is going to be responsible for those losses. At that time he mentioned me that I owed him the amount of \$4,032.00 for the pre-test performed, and then I told him I was going to send a letter to your company mentioning my losses and all the work he never did and that from that losses he could deduct the \$4,032.00.

Cc: Robert Laurie (via certified mail #7006 0810 0000 3167 5071)
Anthony Somefun, P.E.

Jose Betancourt
President



Respectfully Yours,

\$187,500.00
(\$ 4,032.00)
Balance → \$183,468.00

be damaged as a direct result thereof.

If you think I owe you any money you can deduct it from my losses and send me the balance as shown below to avoid legal procedures. I have lost all confidence in your company based on its negligence, breach of agreement, deception, unlawful business practices and fraud perpetrated on me and my company. It is apparent based upon the above that your company is not fit to render competent service under the service agreement and my company will inevitably

- huge sum of money and Robert was always aware of this.
- 9) Finally, due to this delay, we accumulated losses of \$187,500.00. This is a project, I had to go in person to your office for my folder. said it would take about 2 days more, but because of the urgency of this a disc that we gave him. I asked Robert to send me back my folder and he missing. Later on, Robert acknowledged that they received everything plus drawings we gave you were incomplete and that FA6 and FA7 were
- 8) Just to cover the poor handling of my project, I was told that the told the secretary about the July 2nd Fire Department inspection. certification, this was a lie, I never asked any electrician for that, I only electrician called him and said that I asked him to give us a self Robert gave me. Half hour later I had a call from Robert saying that the heard of my company before. Then I faxed a copy of the papers that Corp.) to notify him of the July 2nd inspection and he claimed that he never
- 7) I contact the electrician that Robert recommended (K.G.K. Electrical

USPS Form 3800, June 2002

City, State, ZIP+4
Avenue N.J. 07001

or PO Box No.
3333 Broadway Ave.

Street, Apt. No.
Robert J. Luvit - 1305 Smith St. 6th fl.

Sent To

Postage	Certified Fee	Return Receipt Fee	Restricted Delivery Fee	Total Postage & Fees
\$0.44	\$0.65	\$2.15	\$0.00	\$3.24

Postmark
0342 10 03 2007

SPRINGFIELD POSTAL STORE

07/03/2007

For delivery information visit our website at www.usps.com

7006 0810 0000 3167 5

Robert J. Laurie
Electronic Sales Rep
Call: 917-417-7521
haurie@lyc0rn.com
SimplexGrinnell LP
2323 Randolph Avenue
Avenel, NJ 07001
Tel: 732-381-7722
Fax: 212-462-4524
Toll Free: 888-447-4027
www.simpngxgrinnell.com
24 Hour Emergency Service

S. Altan Mansur
Service Sales Account Executive
Cell: 917-299-5531
smansur@itycoint.com
SimplexGrinnell LP
2323 Randolph Avenue
Avenel, NJ 07001
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GSA Schedule Contractor
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tyco
Fire &
Security

U.S. Postal Service™		CERTIFIED MAIL™ RECEIPT	(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com			
ANGELINI NJ 07001 JUL 03 2007 USPS MAIL STORE			
\$	\$0.44	Postage	
\$	\$2.65	Certified Fee	
\$	\$2.15	Return Receipt Fee	(Endorsement Required)
\$	\$2.00	Restricted Delivery Fee	(Endorsement Required)
\$	\$5.21	Total Postage & Fees	

STAMP: JUL 03 2007 10 03 PM '07

POSTAGE PAID PERMIT NO. 10994-6603 NEW YORK NY 10994-6603

Sent To: S. Altan Mansur - NYC/Sample G.
Street Apt. No.: 333 Randolph Ave
City, State, ZIP+4: New York, NY 10001

Form 3800, June 2002

7006 0810 0000 3167 5088

EXHIBIT "B"

Page 1 (of 2)

There were also administrative shortcomings. The electrical contractor's affidavit (the A-433 form) must be properly completed to reflect the installed fire alarm system. The A-433 form reviewed by Inspector Rahman indicated two systems, an individually coded interior fire alarm and a class "E" system. This must be corrected. Also, the A-433 form indicates a sprinkler booster pump. This requires the submission of a plumbing application, called the Schedule-B form, from the NYC Department of Buildings.

There were numerous technical and administrative deficiencies reported by Inspector Rahman. The main technical problem is that the fire alarm panel is not suitable for an individually coded fire alarm system. It must be replaced, or an official "reconsideration" application submitted to the Bureau of Fire Prevention. A master-coded system may be found acceptable following an appropriate review by the Bureau of Fire Prevention's Technology Management Unit. It is also very important to point out that the HVAC installation had not been completed on the day of the first expedited inspection. A fan shutdown test could not be conducted because of this.

The request from your office for a second expedited inspection at the subject location was discussed in the Bureau of Fire Prevention (BFP) yesterday. The first expedited inspection was conducted by Inspector Mohammed Rahman on March 22, 2007. I conferred with Assistant Chief of Fire Prevention Thomas Jensen and the Supervisor/Technical staff of the Fire Prevention's Fire Alarm Inspection Unit. It was determined after an account record review that a second expedited inspection would not be possible at this time.

Dear Ms. Halperin:

Subject: The Wellness Center at Port Morris,
804 East 138th Street, Bronx, NY 10454

Attn: Marisol Halperin, Room 207
Bronx, New York, 10451
651 Grand Concourse,

The Office of the Bronx Borough President

April 25, 2007



FIRE DEPARTMENT
9 METROTECH CENTER
BROOKLYN, N.Y. 11201-3857

Page 2 (of 2)

Director of the Fire Alarm Inspection Unit

Robert S. Rampino

Robert S. Rampino

Very truly yours,

Do not hesitate to contact me if you have any further questions. I can be reached at
rampino@fdny.nyc.gov or 718-999-2374.

- A B-45 application for inspection must be submitted to the Fire Alarm Inspection Unit's scheduling desk on the first floor of FDNY Headquarters along with all other pertinent documents. This must be accomplished after the referenced instructions are accommodated. The scheduling desk is in a public access area and does not require an appointment.
- An affidavit must also be submitted from a professional engineer, electrical contractor or registered architect indicating that the fire alarm system has been made defect free as per code.

The following course of action must be taken prior to a second expedited inspection:

EXHIBIT "C"



FIRE DEPARTMENT
BUREAU OF FIRE PREVENTION
9 MetroTech Center
Brooklyn, N.Y. 11201-3857

LETTER OF DEFECT

DATE OF INSPECTION: 08-18-2007
INSPECTOR: (Print) M. Haddad
BLDG. DEPT. APPL. NO.: 261037326
PLAN NO.:
FLOOR(S) INSPECTED: 6th
SYSTEM: Standby / Standby / Automatic

Premises: 807 E. 13th St.
Brooklyn, NY
Owner: T. Williams, C. Williams, P. Williams
800 E. 13th St.
Brooklyn, NY
ZIP

Sir/Madam,
You are hereby informed that upon inspection of the Electrical Equipment installed at the above premises, deficiencies were noted requiring the corrective action stated below. This letter of Defect is subject to administrative review and may result in the issuance of an Amended Letter of Defect.

- ① Re-Install the Fire Alarm Control Panel (FACP) to be located by the Apartment.
- ② Re-Install the Fire Alarm Control Panel (FACP) to be located by the Apartment.
- ③ Re-Install the Fire Alarm Control Panel (FACP) to be located by the Apartment.
- ④ Re-Install the Fire Alarm Control Panel (FACP) to be located by the Apartment.

RECEIVED BY: J. B. Haddad
COMPANY: J. B. Haddad
TELEPHONE NO.: (718) 772-2500
INSPECTOR: M. Haddad

TELEPHONE NO.: (711) 772-2800

INSPECTOR:

M. V. 100000

or J. d. R. + m. c. all. or. c. d.

⑩ R. m. c. all R. m. c. T. m. c. + R. m. c.

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(8) Rec'd. / I-1 + 11 f'' Jm.u. B.II + Lc

Official Record

(7) P. regilla R. nov. all H. c. ~ / H. c. l. r.

1. All - 100% - All M. 100% - 100%

(c) $P_{\text{c.d.}} / \bar{I} + 11$ a constant $P_{\text{c.d.}}$

~~Non-Ritardabile + mail-giornale a p. ced.~~

(5) Pseud. / A. f. lach R. m. t. A.

11.11.1964 at 10.00

(9) Project Plac. 601 P. May 15 Sunday

classmate

(3) ~~Project Name: #10449 Ground W.~~

~~General Power Supply + mod. output~~

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Recall that all elements mod q are

(1) Fiedl. / L. Hall A. m. d. A. f. A. l.

review and may result in the issuance of an Amended Letter of Defect.

You are hereby informed that upon inspection of the Electrical Equipment installed at the above premises, deficiencies were noted requiring the corrective action stated below. This letter of Defect is subject to administrative review and may result in the issuance of an Administrative Order if the deficiencies are not corrected.

Sir/Madam,

Owner:

Premises:

LETTER OF DEFECT

FIRE DEPARTMENT
BUREAU OF FIRE PREVENTION
9 MetroTech Center
Brooklyn, N.Y. 11201-3857



Control No. 637337

Page-

1. WHITE-F.D.

2. YELLOW-OWNER

3. PINK-SUPERVISOR

4. GOLDEN ROD-BUILDING DEPT.

INSPECTOR M. V. ...

- (1) Read/Analyze for all tags, switches to be supervised only, not to be ...
- (2) Read/Analyze for all tags, switches to be supervised only, not to be ...
- (3) Read/Analyze for all tags, switches to be supervised only, not to be ...
- (4) Read/Analyze for all tags, switches to be supervised only, not to be ...
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- (31) Read/Analyze for all tags, switches to be supervised only, not to be ...
- (32) Read/Analyze for all tags, switches to be supervised only, not to be ...

Premises 807 East 138th Street, Bronx

ELECTRICAL INSPECTION
LETTER OF DEFECT

FIRE DEPARTMENT
BUREAU OF FIRE PREVENTION
9 MetroTech Center
Brooklyn, N.Y. 11201-3857



**FIRE DEPARTMENT
BUREAU OF FIRE PREVENTION
9 MetroTech Center
Brooklyn, N.Y. 11201-3857**

Page 3 Of 3

**ELECTRICAL INSPECTION
LETTER OF DEFECT**

Premises 107 East 13th St, Brooklyn

- (23) Remove all Carbon Monoxide Detectors throughout as Clear Occupancy does not require this device per Local Law #7.
- (24) Adhere to Fire Prevention Code (Title # 0707051 dated August 3, 2007) accordingly.

INSPECTOR M. Kavelius